

Exhibit 44

Filed Under Seal

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
Defendant.)
-----)

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Videotaped Deposition of BRIAN J. SWETLAND,
taken at 333 Twin Dolphin Drive, Suite 400,
Redwood Shores, California, commencing at
9:40 a.m., Thursday, July 7, 2011, before
Leslie Rockwood, RPR, CSR No. 3462.

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1 license?

2 A. The intent here, I believe, again, is that

3 they are -- they are non-permissive, you know, licenses,

4 which when combined with other work, you know, cause

5 issues -- compliance issues around source release and 15:32:48

6 redistribution and so on.

7 Q. Okay. So this will be -- this is another

8 earlier exhibit number, 72.

9 What is Exhibit 72?

10 A. It apparently is an email from an engineer on 15:33:56

11 the Android team. Give me a moment to read it here.

12 So this appears to be an email thread

13 discussing Sun's announcement of open sourcing Java.

14 Q. So Sun did open source Java at the end of

15 2006; is that your recollection? 15:35:25

16 A. I believe that's the case, though this may

17 be -- this implies -- this implies that, yeah, the --

18 what is it? Does it say specifically here? The email

19 thread seems to imply that, yes, that's when it happened.

20 Q. Mr. Baust wrote: "I would already be happy 15:35:57

21 if we can just drop in their libraries, but still not

22 sure it's compatible with their license choices."

23 Would you have been happy to drop in Sun's

24 libraries into Android at that point?

25 A. Based on the specifics of their licensing, 15:36:16

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1 no, because they would be incompatible with our policy of

2 not using GPL for core libraries.

3 Q. So I'm -- and so Google for Android, in any

4 event, did not end up including Sun's open source Java

5 core libraries in Android? 15:36:45

6 A. The decision was made specifically not to do

7 so because the term -- the terms of the licensing were

8 inappropriate for the platform.

9 Q. Because I do want to be very clear about it,

10 Sun offered the core libraries for no charge, and Google 15:37:02

11 did not accept them; is that correct?

12 MR. PAIGE: Object to the form.

13 THE WITNESS: Sun released their libraries

14 under a specific license, which for the mobile version of

15 their platform would have made it impossible for OEMs and 15:37:18

16 potentially developers to develop commercial software for

17 that platform, which made it a -- you know, from a

18 license standpoint, useless for Android.

19 Q. BY DR. PETERS: So it was to protect OEMs and

20 commercial developers that Google did not incorporate a 15:37:46

21 free-of-charge version of Sun's core libraries into

22 Android; is that right?

23 MR. PAIGE: Object to the form.

24 THE WITNESS: Again, I can't necessarily

25 speak for all the business-level decisions, but my 15:38:06

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1 understanding of the license options provided on this

2 open source release were that the mobile -- you know, the

3 mobile -- the smaller version of these libraries that

4 would be appropriate for the Android platform had a

5 license that was incompatible with the license chosen for 15:38:26

6 the Android platform.

7 Q. BY DR. PETERS: And the -- just because I'm

8 having trouble getting a "yes" or "no" answer from you,

9 the Sun core libraries were made available under license

10 for no charge by Sun; is that right? 15:38:49

11 MR. PAIGE: Object to the admonishment and to

12 the form.

13 THE WITNESS: The -- my understanding is that

14 they were available under the GPL license, which does not

15 have a direct monetary charge associated, but has a 15:39:09

16 series of restrictions and requirements that, you know,

17 restrict the use of, you know, software under that

18 license.

19 Q. BY DR. PETERS: And the -- and so even though

20 Sun's Open Source Java was available without charge, the 15:39:38

21 license restrictions were nevertheless not acceptable to

22 Google.

23 Do I have that right?

24 MR. PAIGE: Object to the form.

25 THE WITNESS: Again, it is difficult for me 15:39:54

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1 to speak for Google. From my understanding of the

2 project goals, yes, the license terms were incompatible

3 with the goals of the project.

4 Q. BY DR. PETERS: You wrote in Exhibit 72, this

5 November 13th, 2006 email: "It would be nice if somebody 15:40:19

6 made a stink about this and called Sun on it should it

7 turn out to be correct, which I expect is likely. Sadly,

8 nobody ever does call them on stuff like this."

9 What would you call Sun on?

10 A. I believe what I'm referring to here is the 15:40:37

11 fact they're generating significant press around how open

12 and unrestricted and, you know, wonderful Java is, when

13 in fact, the decision they clearly made here in, you

14 know, creating, you know, field-of-use barriers to the

15 language actually prevents it from being used openly in, 15:41:00

16 you know, whole classes of products.

17 That's a subtle issue, and it's not an issue

18 that articles talking about how awesome it was that

19 Sun -- or that Java is open source seemed to pick up on.

20 Q. But Linux is licensed under the GPL, isn't 15:41:18

21 it?

22 A. The Linux kernel is licensed under the GPL,

23 with a specific carve-out that says that user space code

24 running on that kernel is not affected by that license,

25 which is similar to the Classpath exception that Sun 15:41:40

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